

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Petition of the Wisconsin Department of Transportation for the Establishment of a Public Crossing of the Union Pacific Railroad Co. Tracks with the Racine-Sturtevant Bike Trail in the Village of Sturtevant, Racine County

9040-RX-1183

FINAL DECISION

By letter dated April 29, 2004, the Wisconsin Department of Transportation (DOT) petitioned the Office of the Commissioner of Railroads (OCR) for the establishment of a public crossing of the Union Pacific Railroad Co. (UP) tracks with the Racine-Sturtevant Bike Trail in the Village of Sturtevant, Racine County.

Jurisdiction: Secs. 195.28 and 195.29, Stats.

Pursuant to due notice, public hearing was held in this matter on July 9, 2004 in Madison, Wisconsin with hearing examiner Douglas S. Wood presiding.

On August 5, 2004, the hearing examiner issued a proposed decision that recommended dismissal of the petition due to lack of jurisdiction. The hearing examiner found that the proposed terms of a license agreement between Racine County and WE Energies did not create a public way. The parties subsequently asked that the docket be held open to allow for revision of the license and to submit plans for fencing to limit the public use of the crossing to the recreational trail users.

On February 4, 2005, the DOT submitted a revised license agreement and fencing plans (Delayed Exhibit 3). The revised agreement cures most of the defects cited by the hearing examiner. Of most importance, the revised agreement lengthens the initial term of the agreement from 5 years to 15 years. In addition, language that might have conflicted with the OCR's authority to regulate the safety of the crossing was removed. The Commissioner concludes that the terms of the revised agreement create a public way.

The fencing plan calls for a system of fencing and a gate located approximately 15' west of the track centerline. The plan provides a 10'-wide opening for the trail with a removable bollard with a locking mechanism in the center. The fencing extends approximately 20' from the edge of the paved surface to the north and south. A rolling cantilever gate will extend over the part of the crossing reserved for private use.

The Commissioner finds that this fencing system in conjunction with appropriate signage will adequately protect and promote public safety. The Commissioner approves the petition for the establishment of this crossing.

Appearances:

Parties

Wisconsin Department of Transportation, Petitioner
by
Mark Leemon, Railroad Coordination Engineer
PO Box 7914
Madison, WI 53707-7914

In Support:

Racine County
by
Jeffrey Katz, PE
14200 Washington Avenue
Racine, WI 53177

As Interest May Appear:

Union Pacific Railroad Co.
by
Aaron Berndt, Attorney
735 N. Water Street, Suite 1500
Milwaukee, WI 53202

Findings of Fact

THE COMMISSIONER FINDS:

The Wisconsin Department of Transportation and Racine County propose to establish a public crossing of the Union Pacific Railroad Co. tracks with the Racine-Sturtevant Bike Trail in the Village of Sturtevant. The DOT and Racine County plan to construct part of the Racine-Sturtevant Bike Trail in 2005. The DOT proposes to convert an existing private roadway crossing to a public recreational trail crossing. DOT proposes that the UP install a rubber rail-seal crossing surface.

Proposed Crossing

The Racine-Sturtevant Bike Trail will consist of a 10'-wide paved surface with 3'-wide gravel shoulders. The Trail would intersect the track at an angle of 81°. The Trail approaches to the crossing would be ascending at less than 1.0%.

The DOT and County originally proposed to utilize the existing private driveway crossing for the Trail crossing. The driveway crossing is 32' wide with full-timber surface. The DOT and County propose that the UP replace the entire 32' crossing with a rail-seal surface, which provides a safer riding surface for bicyclists. The Trail would technically only utilize 16' of the existing driveway. At the time of hearing it was not clear that there was any practical way to separate the trail use from the private vehicular use of the crossing. The fencing system described in the discussion of comments provides a practical way to separate the public and private users.

With regard to the width of the crossing, the OCR only has authority to order the UP to install a rail-seal crossing for the public portion of the crossing. The parties will need to reach agreement to have the private portion rebuilt at the same time.

The UP also originally requested that fencing be installed parallel to the track for at least 100' on each side of the roadway on the east side of the tracks to discourage users of the Trail from cutting across the tracks at an unimproved location. The DOT and the UP later agreed that this right-of-way fencing was unnecessary in light of the proposed fencing system.

The Racine-Sturtevant Bike Trail will be used by about 75 pedestrians and bicyclists per day. The design speed limit is 20 mph. The Trail will be open to the public year-round. Snow will be removed from the Trail surface as necessary. The Trail will not be open to motorized uses.

The railroad currently operates 20 through train movements per day over the proposed crossing location at a speed of 50 mph. The railroad also operates 4 switch movements per day at a maximum speed of 10 mph.

The Racine-Sturtevant Bike Trail is being constructed in phases and will ultimately extend from Racine, through Sturtevant to the west side of Interstate 94.

Crossing at an unimproved location increases the hazards to the pedestrians, especially from tripping on the ballast, ties, and rails.

The crossing presently has crossbucks and stop sign for warning devices. These warning devices are adequate, except that new signs should be installed due to the age and condition of the existing signs. An advance warning sign is also needed for the westbound approach. Clearing sight distance will be adequate from the stop signs.

In summary, the establishment of the crossing at-grade of the Union Pacific Railroad Co. tracks with the Racine-Sturtevant Bike Trail will promote public safety and convenience by providing a safe place for recreational trail users to cross the tracks.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the establishment of the crossing at-grade of the Racine-Sturtevant Bike Trail with the Union Pacific Railroad Co. tracks in accordance with the design plans of the Wisconsin Department of Transportation and Racine County in the Village of Sturtevant, Racine County will promote public safety and convenience.
2. That in order to adequately protect and promote public safety, it is necessary to install and maintain reflective crossbucks, stop signs, and the fencing system set forth in Delayed Exhibit 3.
3. That it is reasonable that the Union Pacific Railroad Co. bear no part of the cost for the crossing construction.

Conclusion of Law

THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under §§195.28 and 195.29, Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

Order

THE COMMISSIONER ORDERS:

1. That the **Union Pacific Railroad Co.** shall install and maintain a rail-seal crossing at-grade of the Racine-Sturtevant Bike Trail with its tracks in accordance with the design plans of the Wisconsin Department of Transportation and Racine County in the Village of Sturtevant, Racine County by **August 30, 2005.**
2. That the **Union Pacific Railroad Co.** shall install and maintain retroreflective back-to-back crossbucks with 2" wide reflective vertical strips on the front and back of the support posts on each approach to the crossing of its tracks with the Racine-Sturtevant Bike Trail at-grade in the Village of Sturtevant, Racine County by **August 30, 2005.**
3. That **Racine County** shall install and maintain stop signs on separate posts on each approach to the crossing of the Union Pacific Railroad Co. tracks with the Racine-Sturtevant Bike Trail at-grade in the Village of Sturtevant, Racine County by **August 30, 2005.**

4. That **Racine County** shall install and maintain the fencing system set forth in Delayed Exhibit 3 by **August 30, 2005**.

5. That the **Union Pacific Railroad Co.** shall bear no part of the cost of the crossing construction, except for any cost assessed to the railroad pursuant to §195.60, Stats., for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.

6. That jurisdiction is retained.

Dated at Madison, Wisconsin, _____.

By the Office of the Commissioner of Railroads.

Rodney W. Kreunen
Commissioner of Railroads

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